

RANDALL PARKER
Plaintiff,

v.

UNITED STATES OF AMERICA
Defendant.

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Humphrey, 114 S.Ct. 2364, 2372 (1994). Heck has been held to apply in those situations in which a federal conviction is being challenged, as is the case here. See Robinson v. Jones, 142 F.3d 905, 906-907 (6th Cir.1998).

There is nothing in the complaint to suggest that the plaintiff's conviction has been overturned or otherwise declared invalid prior to the initiation of the instant action. To the contrary, the plaintiff's conviction was recently affirmed on appeal (Docket Entry No.684). The case, however, has been remanded back to this Court where the plaintiff is scheduled for resentencing on May 18, 2007 (Docket Entry No.704). Thus, the plaintiff's claims are not yet cognizable in an action for damages.

At this time, the plaintiff has failed to state a claim upon which relief can be granted. Consequently, the Court is obliged to dismiss the complaint sua sponte without prejudice. 28 U.S.C. § 1915(e)(2); Lanier v. Bryant, 332 F.3d 999, 1005-1006 (6th Cir. 2003) (district court properly dismissed a complaint seeking damages arising out of plaintiff's conviction before the plaintiff had his conviction set aside).

An appropriate order will be entered.


Todd Campbell
United States District Judge